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May 8, 1998

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

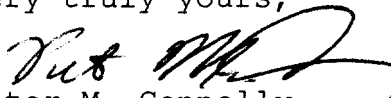
Re: CC Docket No. 97-213

Dear Ms. Salas:

Herewith transmitted, on behalf of United States Cellular Corporation, are an original and four copies of its "Comments and Petition For Extension of Compliance Date" in the above-referenced proceeding.

In the event there are any questions concerning this matter, please communicate with this office.

Very truly yours,


Peter M. Connolly

Enclosure
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MAY - 8 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Petition for the Extension)
of the Compliance Date Under) CC Docket No. 97-213
Section 107 of the Communications)
Assistance for Law Enforcement Act)

COMMENTS AND
PETITION FOR EXTENSION
OF COMPLIANCE DATE

United States Cellular Corporation ("USCC"), on behalf of itself and of its subsidiaries and affiliates operating cellular systems, hereby, pursuant to Section 107(c) of the Communications Assistance for Law Enforcement Act ("CALEA"), 47 U.S.C. §§ 1001 et seq., seeks an extension of CALEA's October 25, 1998 compliance date until at least October 24, 2000, because it will not be possible to obtain and install the necessary CALEA compliant equipment until at least that date.¹

¹ On April 20, 1998, the FCC released a public notice asking comments on a variety of CALEA-related subjects. See Public Notice, DA-762, released April 20, 1998. In that notice, inter alia, the Commission asked for comments by May 8, 1998 on "possible actions the Commission might take, including an extension order that applies to all carriers subject to the compliance deadline" to ensure that "the objectives and obligations of CALEA are met in the most timely manner." As is discussed herein, USCC believes that it is urgently

Background

USCC owns and/or operates cellular systems in 100 RSA and 43 MSA markets. USCC is therefore a "telecommunications carrier" as that term is defined in Section 102(8) of CALEA, 47 U.S.C. § 1001(8)(B)(i), that is, USCC is "a person or entity engaged in providing commercial mobile radio service (as defined in Section 332(d) of the Communications Act of 1934 (47 U.S.C. § 332(d)))".

Accordingly, USCC is subject to the requirements of CALEA, as are all other CMRS carriers.

I. Good Grounds Exist For
Extending CALEA's October
25, 1998 Compliance Date

The complex history of CALEA compliance efforts on the part of telecommunications carriers and the nature of the matters which are now at issue between such carriers and the FBI and the Department of Justice are well known and have been ably set forth in several 1997 and 1998 filings by industry associations.²

necessary that it and similarly situated CMRS carriers receive at least a two year extension for CALEA compliance. Obviously, a blanket extension of time until October 25, 2000 applicable to all such carriers would meet USCC's needs and obviate the need for individual extensions. We support such an extension. However, USCC believes that it could not wait until the Commission considered the comments filed in response to the April 20 public notice to file its own request for extension, given the importance of the issues involved and the present penalties for non-compliance.

² See CTIA Petition For Rulemaking, filed July 16, 1997; Center for Democracy and Technology Petition For Rulemaking under Sections 107 and 109 of CALEA, filed

For present purposes, it is sufficient to state that an "interim industry standard" for CALEA compliance was adopted by TIA in December, 1997 in accordance with Section 107 of CALEA (47 U.S.C. § 1006(2)). However, on March 27, 1998 that standard was challenged as "deficient" under Section 107(b) of CALEA (47 U.S.C. § 1006(b)) by the FBI. Now the FCC must, in accordance with the same section, adopt CALEA technical standards which will:

- (1) meet the "assistance capability requirements of Section 103 of CALEA (47 U.S.C. § 1002);
- (2) protect the privacy and security of communications not authorized to be intercepted;
- (3) minimize the costs of such compliance for residential rate payers;
- (4) serve the policy of the United States to encourage the provision of new technologies and services to the public; and
- (5) provide a reasonable time and conditions for compliance with and transition to that standard, including defining the obligations of telecommunications carriers under Section 1002 of CALEA during any transition period.

It will probably be impossible for the FCC to adopt a rule setting forth standards which meet those exacting requirements by October 25, 1998 and it will absolutely be impossible for carriers to come into compliance with such standards by that date. Accordingly, fundamental principles of fairness in the administrative law context require at least a two year extension of

March 26, 1997; Telecommunications Industry Association ("TIA") Petition For Rulemaking filed April 2, 1997; and CTIA Response To Petitions For Rulemaking, filed April 9, 1998.

the currently applicable deadline, especially given the 24 month "development cycle" for software noted by CTIA in its recent filing. CALEA itself provides for an extension of that duration if appropriate circumstances exist, as they do here.³

There is one additional, crucial reason why an extension should be granted to USCC and other similarly situated carriers, namely that the inability of the relevant parties to adopt a standard over the past four years has totally undermined CALEA's intended reimbursement structure.

Under Section 109 of CALEA (47 U.S.C. § 1008), telecommunications carriers were to be financially responsible for deploying CALEA compliant equipment after January 1, 1995, unless the FCC, as a consequence of a petition by a carrier, determined that such compliance was not "reasonably achievable" for that carrier.⁴ Congress's assumption evidently was that CALEA standards would be rapidly adopted in 1994 and 1995 and that equipment complying with those standards could be equally rapidly developed and installed. Under Section 109, if the FCC did determine, however, that compliance was not "reasonably achievable," a carrier would be deemed to be in compliance with the applicable "capability requirements, unless the Attorney General agreed to pay the costs of compliance.

³ See Section 107(c) of CALEA, 47 U.S.C. § 1006(c)(3).

⁴ Reimbursement was, however, to be available for modifying equipment "installed or deployed" prior to January 1, 1995. See, Section 109(a) of CALEA, 47 U.S.C. § 1008(a).

However, the failure of the FBI, industry groups and the FCC to adopt standards between 1994, when CALEA was enacted, and now, has undermined this structure. Virtually all switching software and other equipment purchased and installed by telecommunications carriers since January 1, 1995 will not comply with CALEA standards, since there are still no CALEA standards to meet.

Thus, at present, six months from the deadline, it is not, as the framers of law envisaged, merely a matter of retrofitting certain pre-1995 equipment to bring carriers into compliance with CALEA. Achieving compliance will require modifications to virtually all the relevant equipment of such carriers.

In short, as a result of disagreements about an ambiguous law's requirements, carriers are now in an impossible situation.

Thus, what is urgently needed now from the FCC, as a first step, is a postponement of the otherwise applicable deadline. After that, the FCC must, once and for all, adopt reasonable standards which will fulfill CALEA's directives. When it does so, it will find in USCC and other wireless carriers willing partners and good corporate citizens ready to do their part to ensure that the nation's laws are obeyed.

Conclusion

For the foregoing, reasons, USCC requests that the FCC extend the CALEA compliance deadline until January 25, 2000 as it applies to USCC and its affiliates and subsidiaries.

Respectfully submitted,

UNITED STATES CELLULAR CORPORATION

By:


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May 8, 1998

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